

MEMORANDUM FOR: TRADOC BRAC Office, ATTN: Mr. Durkin

SUBJECT: Actions Permitted in BRAC Realignments Prior to Completion of NEPA Process

1. You asked for guidance concerning what actions may be taken at TRADOC installations receiving new organizations through BRAC realignment prior to the completion of the NEPA process. Specifically, you asked whether new civilian employees could be hired at Fort Benning prior to completion of the NEPA process to support the relocation of the Armor School. As stated below in para 4, hiring a reasonable number of employees at Fort Benning to perform necessary work related to the realignment would be permissible. I've also listed additional permissible actions below.
2. As it concerns NEPA, the essential principle is that until the Army issues a record of decision, no action may be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives.
3. The BRAC process is unlike most other government decision making processes in that the BRAC statute, Title 10, Section 22687, specifically exempts from NEPA analysis the ultimate decision as to where realignments will occur. Instead, NEPA will come into play as it concerns specifically where on an installation an activity will be located and the impact of the actions that will occur on the receiving installation from that activity. In the example of the Armor School, the decision to realign the Armor School to Fort Benning is exempt from the NEPA process, while the determinations of where on Fort Benning to locate the Armor School and how the School will conduct training on Fort Benning will be analyzed under NEPA.
4. Preparatory actions to relocate the Armor School to Fort Benning, or a similar activity to another installation as directed by BRAC, may not limit the choice of the alternatives as far as location on the receiving installation and the location and nature of training activities to occur on the receiving installation. I believe the following examples of preparatory actions are permissible prior to the completion of the NEPA process in the context of a BRAC-directed realignment:
 - a. Any site-specific analyses related to determining an appropriate location on the receiving installation, including training locations.
 - b. Actions preliminary to land acquisition, such as surveys, appraisals, title searches and the like.

c. Architectural and engineering work necessary for planning the design of any facilities needed at the receiving installation.

d. Application for necessary permits for anticipated construction activities.

e. Hiring a reasonable number of employees for the incoming activity at the receiving installation to perform necessary work related to the realignment. Such personnel should operate within existing facilities at the receiving installation.

f. Relocating a reasonable number of military and civilian personnel from the activity's current location to the receiving installation to perform necessary work related to the realignment. Such personnel should operate within existing facilities at the receiving installation.

g. There is limited support in case law for the acquisition of land by lease or purchase prior to completion of the NEPA process. However, in light of the potential for land acquisition to foreclose siting determinations, any land acquisition should be very carefully reviewed prior to completion of the NEPA process to ensure it will not adversely impact the full consideration of siting alternatives.

5. The following actions should be avoided prior to completion of the NEPA process for BRAC realignments:

a. Groundbreaking, or similar site preparation at a specific location on the receiving installation, for buildings for the incoming activity.

b. Groundbreaking, or similar site preparation at a specific location on the receiving installation, for ranges or other support facilities for the incoming activity.

6. I have not located any useful guidance documents specific to this issue. The regulatory guidance I've located addresses this issue in a cursory manner, restating the language of the CEQ regulation. Analysis of specific actions will have to be done in light of this limited regulatory guidance and a small number of federal court cases that address the issue.

7. In preparing this memorandum, I discussed this issue with the Environmental Law Division, OTJAG POC for BRAC actions and incorporated his comments.

/s/

LAWRENCE E. ROUSE
BRAC/Environmental Attorney